

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**CHRISTOPHER P. CRAWFORD,**  
Plaintiff,

CV NO. 09-1152-HU

v.

**FINDINGS AND RECOMMENDATION**

**ROY ORR, Superintendent**  
**Oregon State Hospital,**  
Defendant.

Christopher P. Crawford  
2600 Center Street NE  
Salem, Oregon 97301  
Pro se

John R. Kroger  
Attorney General  
Andrew Hallman  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, Oregon 97301  
Attorney for defendant

HUBEL, Magistrate Judge:

This is a civil rights action by Christopher Crawford, a patient at Oregon State Hospital (OSH), against Roy Orr, Superintendent of OSH. Crawford asserts a claim under 42 U.S.C. § 1983 for violation of his procedural due process rights by the

1 Psychiatric Security Review Board (PSRB). Orr moves to dismiss the  
2 action (doc. # 11) on the following grounds: 1) Crawford is  
3 precluded from bringing an action under § 1983 by Heck v. Humphrey,  
4 512 U.S. 477, 480 (1994), because success in this action would  
5 necessarily demonstrate the invalidity of his confinement; 2)  
6 Crawford has failed to state a claim under § 1983 because he has  
7 not alleged a causal link between Orr's actions and the alleged due  
8 process violations, and even if he had, *respondeat superior*  
9 liability is not available under § 1983; and 3) Crawford's claims  
10 are time-barred. Crawford has not filed a response to Orr's motion  
11 to dismiss.

12 At issue is Crawford's only remaining claim, the second claim  
13 for relief.<sup>1</sup> For this claim, Crawford alleges: 1) PSRB clients are  
14 denied effective assistance of counsel during PSRB hearings because  
15 they are represented by a single attorney, not given sufficient  
16 time to prepare, and clients are often discouraged, if not  
17 prevented, from appeals; 2) the PSRB has ordered Crawford to be  
18 evaluated at his last two hearings, but the orders are not  
19 enforceable by law; 3) PSRB is unwilling to appoint counsel even  
20 though Crawford is indigent; 4) in 1999, PSRB ordered Crawford to  
21 prison for 20 months for Escape II, despite finding that he  
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23 <sup>1</sup> Crawford's first claim for relief, asserting that inmates  
24 committed to the custody of PSRB were subjected to cruel and  
25 unusual punishment, was dismissed for failure to state a claim.  
26 (Doc. # 4). Crawford's third claim, asserting that he had been  
27 subjected to overcrowding, inadequate mental health care,  
excessive force and restraints, and inadequate discharge planning  
were dismissed because Crawford did not allege that Orr was  
personally involved. Id.

1 suffered from a mental disease and presented a danger to himself  
2 and others;<sup>2</sup> and 5) Oregon trial attorneys are generally inept at  
3 representing persons found guilty by reason of mental disease or  
4 defect. For relief, Crawford seeks damages and "injunctive relief  
5 via release from PSRB jurisdiction," and "creat[ing] a pool of  
6 competent attorneys to better represent the civilly and criminally  
7 committed disabled persons like myself."

8 The court has held that Crawford may proceed with this claim  
9 to the extent that it challenges, on procedural due process  
10 grounds, PSRB reviews, and seeks injunctive or declaratory relief.

#### 11 Discussion

12 Orr moves to dismiss the second claim for relief on the basis  
13 of Heck v. Humphrey, 512 U.S. 477 (1994), and the absence of any  
14 allegations linking Orr to the conduct complained of by the PSRB.

15 Orr challenges Crawford's ineffective assistance of counsel  
16 claims arguing that Crawford's success on those claims would  
17 necessarily demonstrate the invalidity of the underlying  
18 proceeding, i.e., the PSRB commitment hearings. In Heck, the  
19 Supreme Court announced a new "favorable termination rule" for §  
20 1983 claims by prisoners:

21 [I]n order to recover damages for allegedly  
22 unconstitutional conviction or imprisonment, or for other  
23 harm caused by action whose unlawfulness would render a  
24 conviction or sentence invalid, a § 1983 plaintiff must  
25 prove that the conviction or sentence has been reversed  
on direct appeal, expunged by executive order, declared  
invalid by a state tribunal ... or called into question  
by a federal court's issuance of a writ of habeas corpus.

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26 <sup>2</sup> This part of Crawford's claim has also been dismissed.  
27 (Doc. # 4).

1 Heck, 512 U.S. at 486-87. In Edwards v. Balisok, 520 U.S. 641, 645  
2 (1997), the Court noted the possibility that a procedural challenge  
3 could necessarily imply the invalidity of the judgment, and be  
4 foreclosed by Heck. The rule in Heck applies to persons who have  
5 been involuntarily committed. Huftile v. Miccio-Fonseca, 410 F.3d  
6 1136, 1139-40 (9<sup>th</sup> Cir. 2005).

7 Orr argues that Crawford's claims of ineffective assistance of  
8 counsel are barred by Heck because success on that claim would  
9 necessarily imply the invalidity of the proceeding, citing, *inter*  
10 *alia*, Hackett v. City of Fresno Fax Area Express, 2009 WL 735254  
11 \* 4 (E.D. Cal. 2009) (plaintiff's claims against public defender for  
12 ineffective assistance of counsel barred by Heck); Smith v. Kramer,  
13 2009 WL 4505894 \*2 (E.D. Cal. 2009) (claim based on wrongful  
14 incarceration caused by ineffective assistance of counsel barred by  
15 Heck).

16 I agree that Heck bars Crawford's claims that PSRB clients are  
17 denied effective assistance of counsel, that the PSRB is  
18 "unwilling" to appoint counsel for Crawford, and that Oregon  
19 attorneys are generally inept at representing persons who have been  
20 involuntarily committed, because success on those claims would  
21 necessarily invalidate his commitment. See Huftile, 410 F.3d at  
22 1139-40. Although ordinarily a prayer for prospective relief will  
23 not necessarily imply the invalidity of a judgment, and so may  
24 properly be brought under § 1983, Balisok, 520 U.S. at 648, the  
25 injunctive relief Crawford seeks is release from PSRB jurisdiction,  
26 which does necessarily imply the invalidity of his commitment.

1 Accordingly, I conclude that Crawford's request for injunctive  
2 relief is also foreclosed by Heck.

3 Orr also contends that Crawford has not stated a claim against  
4 him because Crawford has not alleged a causal link between Orr's  
5 actions and the alleged violations. He argues that because Orr has  
6 no authority or control over PSRB, no act or omission by him could  
7 have caused the violations of which Crawford complains.

8 In order for a person acting under color of state law to be  
9 liable under § 1983, there must be a showing of personal  
10 participation in the alleged rights deprivation. Jones v. Williams,  
11 297 F.3d 930, 934 (9<sup>th</sup> Cir. 2002); Taylor v. List, 880 F.2d 1040,  
12 1045 (9<sup>th</sup> Cir. 1989) (requiring personal participation in the  
13 alleged constitutional violation); May v. Enomoto, 633 F.2d 164,  
14 167 (9<sup>th</sup> Cir. 1980) (§ 1983 liability must be based on the personal  
15 involvement of the defendant). Crawford has not alleged that Orr,  
16 the superintendent of OSH, participated in any of the conduct  
17 alleged against PSRB.

18 Orr also contends that he has no authority to implement or  
19 alter the procedures employed by PSRB in its hearing process, but  
20 argues that even if he did, he could not be liable for procedural  
21 due process violations committed by PSRB because there is no  
22 respondeat superior liability in a § 1983 action. Section 1983  
23 liability cannot be based on respondeat superior. Monell v. Dep't  
24 of Social Services, 436 U.S. 658, 692-94 (1978).

25 Crawford has not alleged that Orr issued the allegedly  
26 unenforceable PSRB evaluation orders, or participated in generating  
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1 them. For these additional reasons, Crawford's claims against Orr  
2 should be dismissed.

3 **Conclusion**

4 I recommend that Orr's motion to dismiss the second claim for  
5 relief (doc. # 11) be GRANTED.

6 **Scheduling Order**

7 These Findings and Recommendation will be referred to a  
8 district judge. Objections, if any, are due June 14, 2010. If no  
9 objections are filed, then the Findings and Recommendation will go  
10 under advisement on that date. If objections are filed, then a  
11 response is due July 1, 2010. When the response is due or  
12 filed, whichever date is earlier, the Findings and Recommendation  
13 will go under advisement.

14 Dated this 26<sup>th</sup> day of May, 2010.

15  
16 s/ Dennis James Hubel

17 Dennis James Hubel  
18 United States Magistrate Judge  
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